IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 725 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VARIETY ENGINEERS (P)LTD.

Versus

RAMAVATAR S SHARMA

Appearance:

1. Special Civil Application No. 725 of 1989

MR KM PATEL for Petitioner No. 1

MR RK MISHRA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 19/02/2004

ORAL JUDGEMENT

Heard learned advocate Mr.K.M.Patel on behalf of the petitioner and learned advocate Mr.R.K.Mishra for respondent workman.

In the present petition, the petitioner has challenged the award passed by the labour court, Baroda in Reference No.255 / 1980 dated 25th October, 1988, whereby the labour court has set side the termination order and granted reinstatement with continuity of service and also granted 25 % backwages of the interim period. This Court, at the time of issuing Rule, has passed the following order on 19th September, 1989.

"Oral Order :

Having heard the learned advocates of the parties, interim relief is confirmed subject to the following conditions.

Reinstatement direction is stayed subject to operation of Section 17-B of the I.D.Act. Respondent will have to file an affidavit as per the said provisions within one week from today. A copy of this affidavit shall be submitted to the learned advocate for the petitioner. Thereafter, if what is stated in the affidavit is not denied, the petitioner shall pay the last drawn wages to the respondent from 1.12.1988 all throughout till today and shall also on paying at the same rate from month to month till pendency of this petition. Arrears as aforesaid from 1.12.1988 upto date will be deposited by the petitioner with the labour court within six weeks of filing of the affidavit by the respondent.

Liberty reserved to the respondent to withdraw the said amount. So far as direction about 25 % of backwages contained in the Award is concerned, the amount payable to the respondent accordingly will have to be worked out by the petitioner and will be deposited with the Labour Court within six weeks from today. Backwages amount will be permitted to be withdrawn by the respondent on furnishing suitable solvent security to the satisfaction of the labour court, Baroda.

[S.B.Majmudar, J.] [V.H.Bhairavia, J.]

In pursuance of the interim order passed by this Court, 25 % of the amount of the backwages is required to be deposited by the petitioner before the labour court within six weeks and such amount is permitted to be withdrawn tot he respondent on furnishing suitable solvent security to the satisfaction of the labour court,

Baroda. Reinstatement has been stayed subject to operation of Section 17-B of the I.D.Act, 1947. The respondent workman has filed affidavit as required under Section 17-B of the I.D.Act, 1947 dated 19th September, 1989. That he remained unemployed and not gainfully employed during the interim period.

Learned advocate Mr.K.M.Patel submitted that the labour court has committed gross error in passing the order in favour of the workman. The labour court has committed an error in coming to the conclusion about victimisation of the petitioner against the respondent workman. There is no evidence at all led by the workman before the labour court to prove victimisation. For allegation of victimisation, some documentary and oral evidence is necessary which was not led by the respondent workman before the labour court. The labour court has also committed error in deciding the question of seniority of the respondent workman and the labour court has committed error having drawn adverse inference as muster roll, pay register and seniority list not produced by the petitioner. The labour court has also committed an error in not appreciating the oral evidence of Mr.Pathan who was witness of the respondent workman.

Learned advocate Mr.R.K.Mishra for the respondent workman has submitted that the labour court has rightly examined the issue and rightly come to the conclusion and for that, this Court having very limited jurisdiction under Article 227 of the Constitution of India and therefore, the present petition is required to be dismissed. He also submitted that the labour court has properly appreciated the documental and oral evidence and come to the conclusion that termination is illegal and he was senior even though the juniors remained in service and the respondent's service has been illegally terminated. He also submitted that merely by paying compensation as required under Section 25-F, is not enough but the employer should have justified the action of the termination which has not been justified by the petitioner by leading proper evidence to the satisfaction of the labour court and therefore, the labour court has rightly set aside the termination order and granted reasonable relief denying 75 % backwages only on the basis that no proper evidence given by the workman.

I have considered submissions made by the learned advocates for the parties. I have also perused the award passed by the labour court. The ground for termination according to the petitioner is economic crises and not having sufficient work orders and therefore, some workmen

become surplus and that is how termination order has been passed against the respondent workman. The second reason is dissolution of the partnership firm and therefore, termination order has been passed against the respondent. After perusing the award, earlier service of the respondent workman was terminated on 25th June, 1976 and thereafter, again the respondent workman was taken on duty and then his service has been terminated on 20th March, 1980. The labour court has examined the oral and documentary evidence and come tot he conclusion that reasons of termination as stated in the notice in advance given to the respondent workman, have not been justified and proved by the petitioner before the labour court. The petitioner has also not proved the fact that on what basis the partnership firm has been dissolved and what would be an effect on the workman on account of dissolution of partnership firm. The labour court has also examined that the workman was engaged because of the earlier accident occurred in the petitioner's firm and thereafter, he was again taken back in service by the petitioner and ultimately, his service was terminated on 20th March, 1980. The petitioner has not produced on record certain documents which were demanded by the respondent workman before the labour court. No documents have been produced despite of the fact that Shri Pathan witness of the petitioner was examined and he had agreed before the labour court that he would produce all the necessary documents, muster roll, pay register and seniority list of the concerned workman but none of the document has been produced by the petitioner and considering this aspect, the labour court has drawn adverse inference and ultimately the labour court has come to the conclusion that non production of muster roll, pay register and seniority list, the fact that whether the workman was junior or senior, was not borne out from the record and therefore, considering all these factors, the labour court has come to the conclusion that service of the workman has been illegally terminated though juniors to the workman remained continued in service. Exh.13/5 was produced before the labour court by the respondent workman to show the progress report of ten years of the petitioner company which was published, wherein it was mentioned that company got work orders of Rs.2.00 crores from various other companies. This fact has not been denied by the petitioner before the labour court. Therefore, the reason which has been given by the petitioner to terminate service of the respondent workman not found to be genuine by the labour court. Therefore, in my opinion, the labour court has rightly drawn adverse inference against the petitioner. The labour court has come to the conclusion that retrenchment of the

respondent workman, is not justified by the petitioner by producing satisfactory evidence before the labour court and therefore, same has been set aside on that ground alone and considering the oral evidence of the workman, the labour court has granted 25 % backwages of the interim period.

In view of above discussion, according to my opinion, while passing the award impugned in the petition, the labour court has not committed any error. As such, there is no procedural irregularity committed by the labour court. The finding given by the labour court is based upon legal evidence and it is not perverse and baseless finding. This Court has very limited jurisdiction while exercising the powers under Article 227 of the Constitution of India. This Court cannot reappreciate the fact finding given by the labour court and this Court cannot act as an appellate authority while exercising the powers under Article 227 of the Constitution.

Recently, this aspect has been examined by the Apex Court in a decision reported in 2003 [9] SCC 452 that this Court having very limited jurisdiction while exercising the powers under Article 227 of the Constitution and critical analyses of the award is not permissible and therefore, according to my opinion, the labour court has not committed any error which does not warrant any interference by this Court while exercising the powers under Article 227 of the Constitution of India. Therefore, there is no substance in the present petition and the same is dismissed.

Rule is discharged with no order as to costs. Interim relief, if any, stands vacated.

Date : 19.2.2004 [H.K.Rathod, J.]

#kailash, PS#